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COMMITTEE ON THE RIGHTS OF THE CHILD

Third session

SUMMARY RECORD OF THE 70th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 January 1993, at 10 a.m.

Chairman: Mr. KOLOSOV

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION (agenda item 11) (continued)

Report of the Sudan (continued) (CRC/C/3/Add.3)

1. The CHAIRMAN invited the representative of the Sudan to reply to the questions raised by the Committee on the previous day.

2. Mr. ABDELHALIM (Sudan), replying to Mrs. Santos Pais' question whether the provisions of the Convention took precedence over national legislation, said that they did; ever since the Convention had been ratified it had been considered to be an integral part of national legislation. She had also asked whether the principle that new legislation took precedence over earlier legislation would in the future allow the promulgation of laws which might limit the Convention. That was out of the question since the text of an international convention could not be amended. His Government had expressed no reservations about the Convention because it had understood the reference in the preamble to the importance of the traditions and cultural values of each people to mean that the provisions of the Convention would apply when not in contradiction with his country's Constitution.

3. He would reply more fully to the question on the independence of the judiciary at a later stage, but it should be noted that judges were appointed by judicial bodies and so were automatically independent since the independence of the legislature and the judiciary was guaranteed.

4. It had been asked whether the Convention had been translated into local languages. Arabic was the lingua franca of the majority of the population of the Sudan. Local languages were used on local radio, which kept the population abreast of matters of interest to it. Meetings and seminars had been held in local languages in the interior of the country. There were, however technical problems in that many local languages had no precise grammar and no standard written form.

5. Mr. Hammarberg had raised some very fundamental questions about legislation, and about contacts and relations between the State and voluntary organizations. The interest he had taken in the implementation of the Convention was to be commended. In the view of the Government of the Sudan, it was not necessary to go further than legislation required. Mr. Hammarberg had raised the question whether, in view of problems connected with communications and the civil war, the implementation of the Convention had been delayed, particularly in the provinces. In that context, the work of the National Council for Childhood was particularly useful since it had subsidiary bodies throughout the country. The courts were aware of new legislation as soon as it was published in the Gazette. As for the areas involved in armed conflict, due to UNICEF's Operation Lifeline Sudan and the intervention of various United Nations agencies and charities, it had been possible to meet many of the needs of children under the Convention. There were however numerous outstanding problems, including the fact that children were among the members of the rebel forces.

6. On the question of relations between the State and voluntary organizations, it should be borne in mind that there had been a massive international effort involving dozens of organizations. The problems that had arisen had been quite limited and confined to certain organizations. Many other organizations had made considerable efforts to help children affected by drought and war. It was natural that problems should arise since people from many different cultures had been coming together to help deal with emergencies. The behaviour of one individual might reflect on a whole organization or indeed the Government. Rules of conduct had been established in 1985 and a coordinating committee had worked with the Government and the United Nations. There was now more stability and greater mutual understanding between the various agencies involved and that had been confirmed in Operation Lifeline Sudan. There had been certain differences, possibly as a result of conflict between the national will and the feelings of organizations which wanted to help without any specific conditions. In particular, newly independent Governments were often sensitive to issues of sovereignty. As to whether there was a way to improve the above-mentioned relations, his Government felt strongly that humanitarian matters should remain purely humanitarian and that political issues should be discarded, particularly in relation to children. He welcomed the decision to consider children as a bridge towards peace.

7. The answer to Mrs. Badran's question on the poverty threshold could only be answered in two or three months' time, when the results of the study had been published.

8. International aid helped to alleviate the negative effects of the structural reforms in the economy, with some projects, for instance those of the United Nations Development Programme, generating revenue. However, available funds were not sufficient to meet the essential needs of families living in poverty. The solution to the problem lay in balanced, sustainable development. The Sudan had benefited from the approach taken by some banks through a UNICEF programme under which the banks did not insist on the Sudan repaying its foreign debt in hard currency, the benefits being passed on to children. A detailed study of that project had been carried out.

9. Mrs. Badran had questioned the accuracy of the figure quoted in paragraph 16 of the initial report of the Sudan (CRC/C/3/Add.3), since she considered that more than 13 per cent of households might be headed by women. He could not confirm that statistic. A fourth census was due to be held in April 1993 and as a result more precise figures would be available, with gender breakdowns.

10. She had further asked whether the objectives set in health, hygiene and education were realistic, and what methods would be used in achieving them. They were considered to be realistic. They had been set following meetings of experts in various fields at both the regional and national levels. The National Plan of Action on Children had been established after a meeting between the Ministry of Education and the Ministry of Health; those two Ministries were working together so as not to leave implementation of the plan exclusively to teachers and doctors. A meeting of educational experts had discussed options for broadening teaching services and using alternative teaching methods. Some African States had significantly increased literacy

training during national campaigns and had used Koranic schools to that end. The Sudan had much experience in establishing that kind of school and so it was possible to take that approach. The achievements in education since 1990 showed that the objectives set could be achieved.

11. In order to clear up a possible misunderstanding, he pointed out that he had not said that the civil war had contributed to dissemination of information on the Convention. He had meant that in areas where there was conflict, human rights issues came to the forefront; they were therefore widely discussed and became more relevant.

12. Mr. Mombeshora had asked a question about the dissemination of laws in the Gazette, whose circulation was very limited. The Gazette was just one of the means available; others included publications and meetings.

13. Mr. Mombeshora had also referred to days of tranquillity and corridors of peace. The former had begun in 1985 and had continued ever since. As Mr. Hammarberg had remarked, there had been problems in observing them but thanks to the efforts of the United Nations, voluntary organizations, the Government and even the rebel forces the national peace agreement had confirmed the existence of secure corridors, which allowed the movement of trains, lorries, ships, etc.

14. Mr. Gomes Da Costa had asked about the relationship between voluntary organizations. The National Council for Childhood had a technical advisory commission which was represented on the Sudanese council of voluntary organizations.

15. As to whether structural changes in agencies working for children had occurred as a result of the ratification of the Convention, there had perhaps not been specific changes in structure but there had been changes in activities. The Council represented the structure, and representatives of Ministries working in areas relevant to children determined overall policies and coordination.

16. On the question of the training of personnel working with children, including judges and the police, there were training programmes for members of those professions and the National Council for Childhood was shortly to organize programmes dealing specifically with children.

17. Mgr. Bambaren Gastelumendi had asked whether a new code for children had been adopted as a result of ratification of the Convention. There was no such code, but a recent seminar had proposed the promulgation of a law or a compendium of legal instruments which would comprise all the relevant legislation on children.

18. He (Mr. Abdelhalim) had already talked about the economic situation of the Sudan and the enormous problem posed by the foreign debt. It was difficult for his Government to get further credit and it lacked the foreign currency it needed to import certain items. The social cost of the foreign debt was a major burden and an obstacle to development.

19. A study on the integration of women had shown that their access to services was often hindered by the sheer size of the country. Combined with traditions and customs, that factor had militated against girls in remote areas attending school. Traditional views were held in the Sudan concerning the roles played in families by parents and children, especially in rural areas. Social and economic factors therefore meant that families often preferred to educate their sons rather than daughters, even though school was compulsory and the population was well aware of that. The Government was working to improve opportunities for girls.

20. In response to the question on school terms, he said they had been planned to take account of agricultural needs. Concerning the role played by the rebel forces in ensuring corridors of peace, the latest peace agreement, signed in December 1992, had taken them into consideration. The corridors had been used, for example, in vaccination campaigns run by UNICEF and in most cases the rebel movements had participated in those campaigns.

21. The CHAIRMAN invited comments and questions on the list of issues, including question 15: "With regard to the provision of food relief, please indicate the ways in which the authorities are cooperating with non-governmental organizations to ensure that the actions taken in this regard are guided by the best interests of the child."

22. Mr. HAMMARBERG, observing that the question of humanitarian assistance had been the subject of some concern within the international community, stressed the need for further action. One of the characteristics of the situation in the Sudan which must be constantly borne in mind was the existence of several players - governmental authorities, armed opposition groups, United Nations agencies, and international and national NGOs. The tragic truth of recent years was that children had died as a result of the situation in the country. There had been a breakdown of trust between the people and organizations willing to contribute towards solving the problems there, and as a result it had become difficult for outside bodies and the Sudanese authorities to work together. Some relief workers had been killed and it had been said that not enough had been done by the Sudanese authorities to investigate the circumstances of those deaths or to take preventive action for the future. Other points of concern related to the effect of unfavourable foreign exchange rates on NGO activities and the failure to open corridors for safe travel within the country. In addition, some foreign organizations had been asked to leave the country or had had vehicles confiscated. Consequently, it was necessary to restore confidence in order that action might be taken in aid of children in the Sudan. A clear statement of interest on the part of the Sudanese authorities might be a positive step in that respect. For their part, members of the Committee were prepared to take action to help overcome existing problems, for example, by forwarding recommendations concerning mediation or proposals for joint investigation, not with a view to taking sides or out of any conviction that outsiders had the right to impose conditions, but with a view to promoting coordination of efforts in the interests of children.

23. Mrs. SANTOS PAIS, also referring to humanitarian assistance and relief and in that context to the observation by the representative of the Sudan that such activities should be non-political, neutral and addressed to children,

said that that was a basic concern of the Committee also. A prerequisite for assistance was openness and willingness on the part of those receiving it, as well as arrangements to protect relief organizations and provide them with the possibility of reaching those in need, particularly children who were internally displaced. Consideration of the types of external organizations which were to be admitted to the country and given the necessary protection to allow them to carry out their work should be based on the nature of their programmes and their capacity to implement them and provide humanitarian assistance in general, not on their geographical origin or religion.

24. The CHAIRMAN, speaking as a member of the Committee, observed that when a country was involved in armed conflict, there were inevitably unfortunate consequences for children. The Convention therefore called upon States parties to alleviate those consequences as far as possible. In order to do so, States must have a clear picture of what was really happening, with information on the numbers of children affected, inter alia, by summary executions, detention without trial, forcible displacement and torture. Information on the situation of refugee and displaced children was also necessary.

25. Mgr. BAMBAREN GASTELUMENDI drew attention to the need to distinguish between policy and politics. The prime concern must be policy as it affected children; not only the Government of Sudan but also NGOs and the international community had an obligation to ensure that the protection of children's lives, needs and interests was a priority, particularly in a country such as the Sudan, where armed conflict had continued for so long. NGOs could be of great help in ensuring the well-being of children, and energetic efforts should continue to be made in that direction.

26. Mr. GOMES DA COSTA requested further clarification of the situation of children in conflict situations. Were children involved as combatants in government and rebel forces? If they were involved with the latter, what steps did the Sudanese Government take in respect of children participating in rebel actions? Was it held that they were being used by adults in political and military activities or that they were fully responsible for their actions?

27. Mrs. BADRAN referred to the question of humanitarian assistance, State sovereignty, and the extent of the State's responsibility for the development and well-being of children. While the State certainly did have primary responsibility, it should not have to bear sole responsibility; NGOs, the international community and the United Nations had a role to play. It was important to bear in mind the urgent need to alleviate the suffering of children and to avoid a false perception of State sovereignty, of the kind that had delayed assistance from the international community in the case of Somalia.

28. The CHAIRMAN referred to the emerging concept of solidarity among nations, which had been manifest in action taken to ensure that international assistance arrived promptly following the Armenian earthquake, for example.

29. Mr. ABDELHALIM (Sudan) agreed that the situation affecting children must be dealt with honestly and objectively in order to fulfil what must be a foremost concern - the well-being of children. The intention of the Sudanese

Government was to enable children to take full advantage of what it could offer them and, at the same time, what the international community could provide. He agreed with Mr. Hammarberg that difficulties had arisen and noted his comment about lack of confidence. He also agreed with Mgr. Bambaren Gastelumendi that it was important to distinguish between politics and policy in relation to assistance. The Committee was not the appropriate forum in which to discuss the validity of the recent General Assembly resolution concerning the situation in the Sudan; in that connection, his Government felt that the Sudan had been treated unjustly, the resolution being adopted hastily on the basis of a few specific considerations. Account should be taken not so much of the need to ensure conformity on the part of the Sudan as of the need for dialogue. In the broader context of the current situation in the Middle East, he drew attention to the existence of double standards in the implementation of resolutions imposed on the different parties to conflicts.

30. It must be recognized, in the situation of the Sudan and other countries, that there were inevitably political aspects associated with assistance. It was therefore important to ensure that the principles of justice and equity were applied. As Mrs. Badran had observed, the State was the primary but not the sole body responsible for taking action; the international community and local communities had also a part to play in guaranteeing the protection of children, bearing in mind that there was a very delicate balance between State sovereignty and international assistance. Indeed, common sense pointed to the need for some reconsideration and adjustment in that area; it would certainly be a mistake to ignore the question of national sovereignty entirely, and therefore a balance must be sought between State responsibility, on the one hand, and international responsibility on the other, on the basis of international cooperation and solidarity among States and peoples.

31. It was true that certain international organizations had been required to leave the country. In that connection, some thought should be given to the implications of the actions of an international organization which had allowed its aircraft to be used to transport weapons. In addition, vehicles had been found in areas of armed conflict, left behind by international organizations and subsequently used by the rebels. When the Government had regained control of those areas, it had confiscated the vehicles.

32. Red Cross activities in the country had been suspended because of problems between the ICRC and the Sudanese Government, but they had resumed after the conclusion of a new agreement. That development had shown that there was no categorical refusal on the part of the Sudanese Government to work with international organizations. As Mrs. Santos Pais had said, assistance entailed openness on the part of the beneficiary and a sense of responsibility on the part of the organization providing the aid; inappropriate situations called for the conclusion of new agreements. The latest agreement between the Government of the Sudan, assistance organizations and voluntary organizations in the Sudan, copies of which were available in the meeting room, had been concluded in December 1992. The agreement was sponsored by UNICEF, with the participation of other organizations and a supervisory group consisting of representatives of UNHCR, assistance organizations and voluntary organizations. All parties cooperated in evaluating needs. In addition, the Sudanese authorities had asked the World

Food Programme to conduct all coordination activities relating to food assistance, distribution of medicines, etc. Such measures must be applied if the situation was to improve.

33. As a follow-up to the General Assembly resolution, a representative of the Commission on Human Rights was shortly to visit the Sudan in order to meet the parties involved and submit a report to the following session of the Commission. Although a fact-finding mission should in principle restore confidence, the establishment of too many groups would further complicate an already complex situation.

34. Replying to questions by Mrs. Santos Pais, he said the continued functioning of Operation Lifeline showed that the Sudan recognized its need for cooperation. He agreed that, if humanitarian aid was to flourish, the groups providing it must be protected. It was for that reason that the Sudan had taken part in international and regional conferences on assistance. The fact that the Sudan had signed the Convention meant that it acknowledged its responsibility in that regard.

35. Mr. HAMMARBERG said that the Committee was aware of the political aspects of the problem, which it would not be productive to discuss at the present meeting. That type of discussion had contributed to a stalemate rather than to solving the problems of children. The point was that confidence-building initiatives were needed because of the worldwide decline of interest in international cooperation.

36. Mrs. SANTOS PAIS said that the General Assembly resolution should be regarded as a reference document and not a framework for dialogue, whereas the Commission on Human Rights had a mandate to examine the situation. The role of the Committee on the Rights of the Child was to determine how the rights of children were implemented in the Sudan and how it could assist the Government in implementing them. The Committee belonged to the United Nations system, and it was no accident that the Charter of the United Nations referred to the promotion of human rights and to international cooperation. When a State ratified the Convention, the main issue was no longer national sovereignty but a mutual commitment by 127 States to protect, respect and promote the rights of children.

37. The CHAIRMAN, referring to the comment by the representative of the Sudan on interpretation of the Convention in the light of national traditions, said that a unilateral interpretation of a multilateral instrument was not possible. Every State party must fully respect the text of the Convention. Although theoretical interpretations were permitted, the Committee's role was to verify whether a State party was obeying the letter and spirit of the Convention.

38. Mr. MOMBESHORA said that after a very lengthy discussion of international cooperation, he did not feel any wiser as to the Sudanese Government's position. The Committee had been told a lot about the activities of international organizations in the Sudan, but it would perhaps be more helpful to say whether the relevant agreements were operational or not. Two thirds of the time allotted for consideration of the Sudan's report had elapsed, but hardly one third of its substance had been covered.

39. The CHAIRMAN invited the representatives of the Sudan to reply to the questions on the list of issues which the Committee regarded as having priority. The replies to the remainder of the questions could be sent in writing at a later date.

40. Mr. ABDELHALIM (Sudan) said that his delegation was prepared to reply to all the questions at the present meeting but it would be happy to follow the procedure outlined by the Chairman. His delegation had never considered the Committee to be acting as a court, and members' comments were being taken in good part. Referring to his earlier remarks on interpretation, he said they should in no way be construed as advocating the right of States to interpret the Convention unilaterally.

41. The CHAIRMAN drew attention to questions 19-21 on the list of issues, which read:

> "19. What is the age of criminal responsibility, in the light of article 40, paragraph 3 (a), of the Convention? Please provide additional information on the different ages referred to in the report in connection with children and the criminal law.
>
> 20. Please explain the definition of the child under criminal law, particularly the concept of the age of puberty and the way in which this provision is applied to girls and boys.
>
> 21. Please provide clarifications on the compatibility between the reference in the report to 18 as the minimum age for criminal responsibility and the reference to absolute crimes in which 'the determination of age is thus not taken into account under the 1991 Criminal Law Act'."

42. Mr. ABDELHALIM (Sudan) said that in accordance with article 9 of the Criminal Law Act, children under the age of puberty could not be considered to have committed an offence. Care and reform measures were applied to children seven years of age and over. Under section 3 of the Act, an adult was a person whose puberty had been established by definite natural features and who had reached 15 years of age; and in the absence of the features of puberty, an adult was any person who had reached 18 years of age. Thus the age of criminal responsibility was generally 18. For certain crimes, however, the Islamic Shariah established maturity on the basis of puberty. Thus in certain cases persons aged 15 who had attained puberty could be held criminally responsible. The addition of the 15-years stipulation was considered to have paved the way for modernizing the interpretation of the Shariah. Some did advocate raising the age of criminal responsibility to 18, but he doubted that would happen since religious matters had to be settled not by jurists but by specially authorized bodies.

43. Mrs. SANTOS PAIS said she was still somewhat confused as to the definition of the child in Sudan. Paragraph 35 of the report referred to young offenders aged 7 to 18 years, and paragraph 163 referred to children over the age of 7. Paragraph 31 referred to the definition in the Minors Act of "juvenile delinquent" as a person from 10 to 18 years of age. Now the Committee was hearing about another criterion, puberty, which was difficult to

establish. Those examples gave the impression that there were subjective considerations surrounding the age of criminal responsibility, and she would like further clarification. She would also like to know whether it had been possible to establish objective criteria to ensure that boys and girls were not treated differently, in view of the fact that they reached puberty at different ages. And given that fact, how was article 2 of the Convention implemented in Sudanese legislation and practice?

44. Mr. ABDELHALIM (Sudan) said that persons under the age of 18 were defined as children and could not be regarded criminals even if they had committed a criminal offence. The treatment of a young offender depended on a judgement as to his or her maturity. Children could not be sent to prison but only to a reformatory, and under the 1983 Protection of Minors Act that measure could be used only as a last resort when reprimand, whipping, committal to care of parents, or court supervision had failed. The question of the age of puberty of boys and girls was clear: the child must have reached the age of 15 and must display the characteristics of puberty. In no circumstances could a child under 15 bear criminal responsibility.

45. Mrs. SANTOS PAIS said that there still appeared to be a grey area with respect to children aged 15 to 18, but she would not press that point or the question of children bearing criminal responsibility for certain offences, which she was still not clear about. In any event, it was a good thing if only persons who had reached the age of 18 could bear criminal responsibility.

46. Paragraph 159 of the report gave the impression that young offenders could be detained in prison. There was little point in children not bearing technical criminal responsibility if they were in fact treated in the same way as adults.

47. Mr. ABDELHALIM (Sudan) said that since 1983 children's reformatories had been separated from the prison system and were now more like schools with social workers in attendance.

48. Mrs. BADRAN said that confusion might have arisen because of a mistake in the translation of the Arabic text of the report. The reference was not to prisons but to detention institutions for young offenders awaiting trial.

49. Mr. ABDELHALIM (Sudan) said that he would now respond orally to some of the questions in the section entitled "Civil rights and freedoms", which read:

> "22. Is Sudanese nationality granted to the child of a Sudanese mother married to a foreigner? Does the system of dual nationality exist?
>
> 23. Please indicate what measures have been taken to ensure that all children are registered after birth. (Art. 7, para. 1, of the Convention)
>
> 24. Please provide further indications on how article 7, paragraph 2, of the Convention is being implemented, especially in cases where only the mother has Sudanese nationality.

25. Please provide further information on the effectiveness of the measures referred to in paragraph 43 of the report as regards the implementation of the right to freedom of expression. (Art. 13 of the Convention)

26. Please indicate how the rights contained in article 14 of the Convention are enjoyed in practice in the Sudan.

27. What measures and mechanisms have been established to implement the civil rights and freedoms provided for in articles 15 and 17 of the Convention?

28. Please indicate how article 47 of the 1991 Criminal Law Act, which refers to whipping for disciplinary purposes, is regarded as being compatible with article 37 (a) of the Convention.

29. Please provide more information on the Child Care Law of 1992 (para. 40 of the report)".

50. In reply to question 25 he could confirm that Sudanese law did not differentiate between children and adults with respect to freedom of expression. That freedom was guaranteed even in education and in educational activities conducted in or outside the schools. Children could participate, for example, in radio and television programmes and the production of children's magazines. The law also stipulated that children's opinions must be taken into account in legal matters and provided guarantees in such areas as the right to privacy, non-interference with mail and telephone systems, and the inviolable nature of private homes.

51. Concerning question 26, there were no restrictions on the rights contained in article 14 of the Convention; those rights were protected by law.

52. Turning to question 28, he said that article 47 of the 1991 Criminal Law Act provided whipping as an optional penalty, which might be imposed by the courts for disciplinary purposes only. There was, in fact, considerable controversy in the Sudan as to whether the beating of children, either in the family or in public, was desirable. He could confirm that whipping was never carried to excess and he did not think that it contravened article 37 (a) of the Convention. In many countries corporal punishment was allowed even in schools.

53. The section entitled "Family environment and alternative care" read:

"30. Please provide further information on the concrete measures taken to implement the provisions of the Convention relating to family environment and alternative care matters, and the effectiveness of such measures, particularly with regard to articles 5, 9 and 18 of the Convention.

31. The report mentions the problem of the illicit transfer of children and that the Sudanese Government was requesting help from neighbouring countries and from international agencies in this regard. Please provide

information on the extent of this problem and on the manner in which international cooperation has been forthcoming so far.

32. Please supply information concerning measures which may have been taken to resettle families and their children who have been evacuated to 'peace cities'".

54. Question 31 related to a sad situation in which children had been used by the rebel movement for military purposes. It was important to note that the situation had come to light when the Sudanese Government had discovered that some of the armed rebels were very young and that children were being used as porters of supplies. The circumstances had been further clarified as a result of an investigation by UNHCR. It appeared that children had been transferred from the Sudan to Ethiopia and then, on the fall of the Mengistu regime, back to the Sudan and thence to refugee camps in Kenya. The number of children moved to Kenya by the rebel movement was estimated at 12,600. Some 3,000 of those children had disappeared from the Kenyan camps. There had been lengthy correspondence and many meetings on the subject between the Sudanese Government and UNHCR, and they were still continuing. UNHCR and the Kenyan and Sudanese Governments had declared that they would do their utmost to ensure the safety and protection of the children.

55. His Government was very worried about the problem and had set up a committee to cooperate with UNHCR and UNICEF. Before relations had been broken off with ICRC, a big effort had been made to identify the families of the children and secure their reunification. The Sudanese Red Crescent had also supplied information about 6,000 to 18,000 children, including some 10,000 in Kenya, and the Sudanese Embassy in Ethiopia had reported on children there. Other children still in the Sudan in areas regained by the Government were receiving assistance from many organizations.

56. Turning to question 32, he said that a national conference on displaced persons had been held in February 1990 and had recommended that they should be moved, either voluntarily or by force, from an insanitary area to the north of Khartoum to other locations where proper facilities were available. Some representatives of organizations for the protection of displaced persons had wanted them to stay where they were in order to generate pity and assistance. But the people concerned were certainly better off in their new locations where, in addition to proper sanitation, they now had access to schools and health services provided partly by the Government and partly by aid agencies, the churches, etc.

The meeting rose at 1 p.m.